IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.09.2007

Coram

The Hon'ble Mr. Justice F.M.IBRAHIM KALIFULLA

Writ Petition No.27472 of 2007
and
Miscellaneous Petition No.1 of 2007

M/s.Ashok Saw Mill
Represented by Mr.Haresh Patel (Partner)
No.46/4-A
Bye Pass
Ariyamangalam
Trichy 620 010. ... Petitioner

Vs.

1. The Authorised Officer
Indian Overseas Bank
No.127
LKS Towers
West Bouleward Road,
Tiruchirapalli 620 008.

2. The Chairman & Managing Director
Indian Overseas Bank
Head Office
Mount Road
Chennai 600 002. ... Respondents'

Petition under Article 226 of the Constitution of Indian to all for the records on the file of the 1st respondent pertaining to the impugned Notice of Sale dated 26.07.2007 under Security Interest (Enforcement) Rules, 2002, and quash the same.

For Petitioner : Mr.S.Sethuraman

For Respondents : Mr.Benjamin George

O R D E R

The petitioner seeks to challenge the impugned proceedings of the first respondent, dated 26.07.2007, under the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as 'Rules').

2. To state the facts briefly:

The petitioner availed certain credit facilities from the respondent/Indian Overseas Bank for its business purposes sometime in the year 1998. The property covered by the impugned notice is one of the secured assets. The petitioner's account was classified and declared as N.P.A. (Non Performing Asset) and the Bank initiated Recovery Proceedings by way of filing Original Application before Debts Recovery Tribunal (in short, D.R.T.). That apart, the Bank also issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as Act) on 17.09.2002 claiming payment of certain sums. Thereafter, possession notice under Section 13(4) of the Act was issued by the Bank on 04.12.2002. It was in the above said background, the impugned notice dated 26.07.2007 came to be issued, invoking Rule 8(5) and 9(1) of the Rules.

3. Mr.S.Sethuraman, learned counsel appearing for the petitioner contends that, even though there is no specified time limit prescribed in the provisions of the Act or the Rules, having regard to the law laid down by the Hon'ble Apex Court in its various decisions, the general law of limitation would apply, by virtue of which, if at all the Bank wanted to bring the properties for sale covered by Section 13(4) notice, which was issued in the year 2002, it could not have validly issued the present proceedings beyond three year period from the date of issuance of the notice under Section 13 (4) of the Act. In support of such contention, reliance was placed upon the decision of the Honourable Supreme Court reported in II (2006) BC 225 (SC) (Maharashtra State Financial Corporation v. Ashok K.Agarwal & Others).

4. The stand of the petitioner was resisted by the respondents/Bank by contending that, whatever be the grievance of the petitioner, in the light of the Division Bench decision of this Court reported in 2005 (3) CTC 513 (Digivision Electronics Limited vs. Indian Bank) and the decisions of the Honourable Supreme Court in Mardia Chemicals Ltd. vs. Union of India (2004 (2) CTC 759) and Transcore v. Union of India (2006 (5) CTC 753), the remedy of the petitioner is to approach appropriate D.R.T. having jurisdiction under Section 17 of the Act.

5. Having heard the learned counsel for the parties, I find force in the submission of the learned counsel for the respondents. In this context, when Section 13(4) of the Act is perused, I find that, apart from taking possession of the secured assets by invoking the said provision, sub-clauses (a) to (c) thereof provide for very many other measures which can be taken by the secured creditor viz., the Bank herein, for the purpose of recovering the secured debt. By virtue of the above referred to sub-clauses in Section 13(4) of the Act, a secured creditor can also resort to a transfer of the secured asset which has been taken possession of by way of lease, assignment or sale. It can also take over the Management of the business of the borrower including the right to transfer by way of lease, assignment or sale, provided substantial part of the business of the borrower is specifically held as security for the debt. That apart, under Section 13(4)(c) of the Act, a secured creditor can also appoint any person as Manger to manage the secured assets, the possession of which has been taken over by the secured creditor. When the above provision under Section 13(4) of the Act with specific rights contained in various sub-clauses is considered by referring to the right of Appeal provided under Section 17 of the Act, I find that under Section 17, any person including a borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by a secured creditor is entitled to file an appeal before the D.R.T. having jurisdiction within 45 days from the date on which such measures had been taken.

6. It is relevant to state that the petitioner was not aggrieved against the action of possession taken by the Bank by issuing the notice under Section 13(4), which was dated 04.12.2002. The present grievance of the petitioner is only as against the impugned action of the respondents as covered by the present notice issued on 26.07.2007, invoking Rules 8(5) and 9(1) of the Rules. Under the said notice, the action contemplated is to bring the secured asset which was already taken possession of by the respondents for sale; therefore, as the present measures taken by the respondents under the impugned notice being a separate one though part of various measures covered by Section 13(4) of the Act, it can be safely held that it is one of the measures covered by Section 13(4) and that the petitioner will be within his rights to invoke Section 17 of the Act and work out his remedy by way of preferring appeal before appropriate D.R.T. having jurisdiction. Inasmuch as the Division Bench decision of this Court reported in 2005 (3) CTC 513 (cited supra) makes it clear that, aggrieved against such proceedings, the remedy of the debtor is to invoke Section-17 by filing an Appeal before appropriate D.R.T. and since I have held that the present impugned proceedings would squarely fall under the expression 'any of the measures referred to in sub-section (4) of Section-13', the petitioner has to work out his remedy as statutorily provided under Section 17 of the Act.

7. In the light of such efficacious remedy being available to the petitioner, the present writ petition cannot be maintained. The grievance of the petitioner based on the ruling of the Hon'ble Supreme Court reported in II (2006) BC 225 (SC) can also be validly raised by the petitioner while working out his remedy under Section 17 of the Act. The petitioner filed this Writ Petition on 03.08.2007 and the impugned order was issued on 26.07.2007; therefore, the petitioner can be permitted to file the Appeal within three weeks from this date. Since the petitioner was diligently prosecuting his rights by filing this Writ Petition, till the three weeks' time granted to the petitioner to approach appropriate D.R.T., the threatened action of the Bank proposed in the impugned notice shall stand suspended.

Writ Petition is dismissed with liberty to the petitioner to work out his statutory remedy under Section 17 of the Act. No costs. Connected Miscellaneous Petition stands closed.

JI.